

# JUDGE KARAS

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

PAUL J. ANDERSON,

Plaintiff

v.

CLIENT SERVICES INC.,

Defendant

Case No. **11 CIV 6512**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**(Unlawful Debt Collection Practices)**

**COMPLAINT**

PAUL J. ANDERSON ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN P.C.,  
alleges the following against CLIENT SERVICES INC. ("Defendant"):

**INTRODUCTION**

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

**JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has its headquarters in the State of New York and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

**PARTIES**

5. Plaintiff is a natural person residing in Garnerville, New York, 10923.

6. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

1           7. Defendant is a debt collection company with its corporate headquarters located in  
2 St. Charles, MO 63301.

3           8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
4 and repeatedly contacted Plaintiff in an attempt to collect a debt.

5           9. Defendant acted through its agents, employees, officers, members, directors,  
6 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

7  
8                                   **PRELIMINARY STATEMENT**

9           11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
10 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
11 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
12 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
13 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
14 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
15 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
16 unconscionable conduct, both generally and in a specific list of disapproved practices.

17           12. In particular, the FDCPA broadly enumerates several practices considered  
18 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
19 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
20 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
21 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
22 collector may not use any false, deceptive, or misleading representation or means in connection  
23 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
24 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
25

1 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
2 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
3 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
4 connection with the collection of a debt.

5 13. In enacting the FDCPA, the United States Congress found that “[t]here is  
6 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
7 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
8 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
9 additionally found existing laws and procedures for redressing debt collection injuries to be  
10 inadequate to protect consumers. 15 U.S.C. § 1692b.

12 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
13 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
14 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
15 collection practices are not competitively disadvantaged, and to promote consistent State action  
16 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

### 17 **FACTUAL ALLEGATIONS**

18 15. At all relevant times, Defendant was attempting to collect an alleged debt that is  
19 related to a credit card issued by Macy’s.

21 16. This debt arose out of transactions that were primarily for personal, family, or  
22 household purposes.

23 17. To provide background, Defendant first sent Plaintiff written correspondence in  
24 or around February of 2010.

25 18. On or around September 21, 2010, Defendant sent Plaintiff a written

1 correspondence, which was confusing, misleading and deceptive. A true and accurate copy of  
2 the September 21, 2010 correspondence is attached as Exhibit "A".

3 19. In the first sentence of the correspondence, Defendant states "I am forwarding  
4 this letter to *confirm* that our client has agreed to accept \$1,921.65 as settlement in full for the  
5 above correspondence (emphasis added)."

6 20. Contrary to the "confirming" letter, Plaintiff had not agreed to enter into an  
7 agreement to pay \$1,921.65 or any other amounts to Defendant.

8 21. Plaintiff understood the letter as an attempt to create by deception a written  
9 "agreement to pay" which Defendant certainly knew he never consented to.

10 22. In furtherance of Defendant's deceptive efforts to refer to a binding agreement  
11 that had not been agreed to, the third paragraph of the correspondence informs Plaintiff of the  
12 tax consequences of the "settlement", and recommends that Plaintiff "consult with a Certified  
13 Public Accountant or other tax professionals."

14 23. The reference to the tax consequences of the "settlement", and advice regarding  
15 professional tax services gave Plaintiff the impression that Defendant believed it had an  
16 enforceable settlement of the debt.

17 24. Defendant was attempting to artificially and unilaterally extend the statute of  
18 limitations by creating a de facto new contract, to which Plaintiff never accepted.

19 25. Plaintiff believes that Defendant did so to deceptively extend the time in which it  
20 could use legal proceedings to collect the alleged debt.

21 26. The last paragraph of the correspondence states "[w]hen you send in a check to  
22 make your payment, you authorize Client Services, Inc. to initiate a one-time electronic debit  
23 from your bank account according to the terms of the check." Plaintiff never authorized a  
24  
25

1 settlement and did not know how Defendant came to believe that he was authorizing a one-time  
2 electronic debit from his bank account.

3 27. Finally, the correspondence contains the phrase “[t]his communication is from a  
4 professional debt collection agency”, a variation of the the language required by § 1692e(11) of  
5 the FDCPA, which was intended to create an impression in the reader that Defendant was  
6 somehow superior to other debt collectors that were *not* professional.

7 28. Defendant intended the September 21, 2010 correspondence to be deceptive and  
8 misleading, in part by creating a false record of communications between the parties which  
9 Defendant could and would use to obtain payment and in part to elicit a response from Plaintiff  
10 to contact Defendant immediately, under false pretenses.

#### 12 CONSTRUCTION OF APPLICABLE LAW

13 29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
14 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer  
15 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.  
16 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
17 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status  
18 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

19 30. The FDCPA is a remedial statute, and therefore must be construed liberally in  
20 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
21 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
22 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the  
23 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
24  
25

1 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
2 2002).

3 31. The FDCPA is to be interpreted in accordance with the “least sophisticated”  
4 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
5 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
6 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
7 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
8 and the fact that a false statement may be obviously false to those who are trained and  
9 experienced does not change its character, nor take away its power to deceive others less  
10 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
11 ensures protection of all consumers, even naive and trusting, against deceptive collection  
12 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
13 collection notices. Clomon, 988 F. 2d at 1318.

15 **COUNT I**  
16 **DEFENDANT VIOLATED THE**  
17 **FAIR DEBT COLLECTION PRACTICES ACT**

18 32. In its actions to collect a debt, Defendant violated the FDCPA in one or more of  
19 the following ways:

- 20 a. Defendant violated the FDCPA generally;
- 21 b. Defendant violated § 1692e of the FDCPA when it used the false, deceptive,  
22 and misleading representations that a settlement had been reached in  
23 connection with collecting a debt;
- 24 c. Defendant violated § 1692e(10) of the FDCPA when it used the false,  
25 deceptive, and misleading representations that a settlement had been reached

1 in connection with collecting a debt;

2 d. Defendant violated § 1692e(11) of the FDCPA when it did not properly  
3 inform Plaintiff that the correspondence was a communication from a debt  
4 collector; and

5 e. Defendant violated § 1692f of the FDCPA when it unfairly implied to  
6 Plaintiff that a settlement had been reached on the alleged debt.

7  
8 WHEREFORE, Plaintiff, PAUL J. ANDERSON, respectfully prays for a judgment as  
9 follows:

- 10 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
11 b. Statutory damages of \$1,000.00 for each violation of the FDCPA pursuant to  
12 15 U.S.C. § 1692k(a)(2)(A);  
13 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
14 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
15 d. Any other relief deemed appropriate by this Honorable Court.

16 **DEMAND FOR JURY TRIAL**

17 PLEASE TAKE NOTICE that Plaintiff, PAUL J. ANDERSON, demands a jury trial in  
18 this case.

19 RESPECTFULLY SUBMITTED,

20  
21   
22 Craig Thor Kimmel  
23 Attorney ID # 2790038  
24 Kimmel & Silverman, P.C.  
25 30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Fax: 877-788-2864  
Email: kimmel@creditlaw.com

PAUL J ANDERSON

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I am forwarding this letter to confirm that our client has agreed to accept \$1,921.65 as settlement in full for the above obligation.

This offer is valid provided the full amount of this settlement is received within twenty days from the date of this letter.

If the amount written-off is equal or greater than \$600.00, our client may be required by internal revenue code, section 6050P, to report this amount and issue a form 1099-C. If you have any questions regarding your personal taxes, it is recommended you consult with a Certified Public Accountant or other tax professional.

Sincerely,

JEFF MARSHALL

This communication is from a professional debt collection agency.

When you send in a check to make your payment, you authorize Client Services, Inc. to initiate a one-time electronic debit from your bank account according to the terms of the check. When your check is converted to an electronic debit, please note that your check will not be returned to your bank and funds may be withdrawn from your checking account the same day we receive your payment. If you do not want your check to be converted to an electronic debit, please notify us in writing, by certified mail. Or if you would like to learn about other payment options, you may call 1-800-521-3236. Please have your Reference Number handy.

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